

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF WASHINGTON  
AT SEATTLE

## ARDELL JOSHUA SHAW,

Petitioner,

V.

KENNETH QUINN,

## Respondent.

CASE NO. C06-424JLR

## ORDER

This matter comes before the court on Mr. Shaw's motion for a certificate of appealability under 28 U.S.C. § 2253(c) (Dkt. # 32). Mr. Shaw seeks to appeal the court's April 25, 2007 order denying his 28 U.S.C. § 2254 habeas corpus petition (Dkt. # 25). For the reasons stated below, the court GRANTS the motion.

Among the substantial changes to federal habeas corpus procedure in the Antiterrorism and Effective Death Penalty Act of 1996 is a rule that a habeas petitioner can appeal the denial of a 28 U.S.C. § 2254 petition only after obtaining a “certificate of appealability.” 28 U.S.C. § 2253(c). Although the statute is ambiguous, the Ninth Circuit has held that a United States District Court may issue a certificate of appealability. United States v. Asrar, 116 F.3d 1268, 1269 (9th Cir. 1997). A court may issue a certificate of appealability only if the “applicant has made a substantial showing of the denial of a constitutional right.” 28 U.S.C. § 2253(c)(2). The Supreme Court has

1 elaborated that a petitioner must show that “reasonable jurists could debate whether . . .  
2 the petition should have been resolved in a different manner or that the issues presented  
3 were adequate to deserve encouragement to proceed further.” Slack v. McDaniel, 529  
4 U.S. 473, 484 (2000) (quotations omitted).

5 Here, Mr. Shaw has made a substantial showing of the denial of a constitutional  
6 right. The court’s dismissal of Mr. Shaw’s habeas corpus petition warrants a certificate  
7 of appealability with respect to the following issue: whether the prosecutor’s failure to  
8 disclose evidence regarding forensic scientist Michael Hoover constituted a violation of  
9 Brady v. Maryland, 373 U.S. 83 (1963).

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11 DATED this 7th day of June, 2007.

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15 JAMES L. ROBART  
16 United States District Judge  
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